STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**04/22/99**	Bill No:	**AB 1315**
Tax:	**Sales and Use**	Author:	**Ashburn & Strickland**
Board Position:		Related Bills:	

BILL SUMMARY:

This bill would exclude any federal and state excise taxes included in the selling price of gasoline and diesel fuel from the sales and use tax.

This bill would additionally require the Franchise Tax Board to calculate the amounts of local revenues attributable to the proposed exclusion, and to report that amount to the Department of Finance, the Controller, and the Treasurer for purposes of making an appropriation to local governments for the revenues lost as a result of this measure.

ANALYSIS:

Current Law:

Existing law imposes a sales or use tax on the gross receipts from the sale of, and on the sales price of, tangible personal property, unless specifically exempted by statute. Existing law expressly *includes* within the definition of “gross receipts” and “sales price” the amount of any tax imposed by the United States upon producers and importers and the amount of tax imposed by the state under the Motor Vehicle Fuel License Tax Law. The law expressly *excludes* from the definition of “gross receipts” and “sales price” the amount of any state tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

Current federal law (Section 4081 of the Internal Revenue Code) imposes an excise tax on producers of $0.184 per gallon on the removal of gasoline from a terminal or refinery, or upon importers for the entry of gasoline into the United States. This section also imposes an excise tax on undyed diesel fuel at a rate of $0.244 per gallon.

Under the Motor Vehicle Fuel License Tax Law (Part 2, Division 2 of the Revenue and Taxation Code, commencing with Section 7301), the state imposes an excise tax, commonly referred to as the “gas tax,” of $0.18 per gallon on the distribution of gasoline in this state.

Under the Diesel Fuel Tax Law (Part 31, Division 2 of the Revenue and Taxation Code, commencing with Section 60001) the state imposes an excise tax of $0.18 per gallon on the distributor at the terminal rack level.

Therefore, under the existing Sales and Use Tax Law, the computation of sales tax on the sale of gasoline includes the 18.4 cents per gallon imposed at the federal level and the 18 cents per gallon imposed by the State.

With respect to sales of diesel fuel, the computation of sales and use tax includes only the 24.4 cents per gallon imposed at the federal level.

The sales tax rate is comprised of the following components:

- 5 percent state tax allocated to the state's General Fund (Section 6051).
- ½ percent state tax allocated to the Local Revenue Fund which is dedicated to local governments for program realignment (Section 6051.2).
- ½ percent state tax allocated to the Local Public Safety Fund which is dedicated to local governments to fund public safety services (Sec. 35 of the California Constitution).
- 1 ¼ percent Bradley-Burns Uniform Local Sales and Use Tax which is allocated to cities and counties (Part 1.5, commencing with Section 7200).
- 1/8 to 1 ¼ percent Transactions and Use Tax which is allocated to special taxing jurisdictions in various counties and cities within the state (Part 1.6, commencing with Section 7252).

Proposed Law:

This bill would amend Sections 6011 and 6012 to exclude from the measure of the sales and use tax the $0.184 per gallon imposed on gasoline by the United States upon producers and importers, the $0.18 per gallon tax imposed on gasoline by the state under the Motor Vehicle Fuel License Tax Law, and the $0.244 per gallon of federal excise tax imposed on diesel fuel.

The bill would provide for an appropriation from the General Fund for the purpose of reimbursing local governments for the revenue loss associated with this exclusion. The bill would require the Franchise Tax Board to calculate this loss attributable to the various local government entities and to report that amount to the Department of Finance, the Controller, and the Treasurer.

The provisions of the bill would become operative on the first day of the calendar quarter commencing more than 90 days after the bill is enacted.

Background:

The provisions in current law which include the federal and state excise tax in the selling price of gasoline within the computation of sales tax were added by Senate Bill 325 (Ch. 1400, 1971), which also, for first time since enactment of the Sales and Use Tax Law in 1933, imposed the sales and use tax on sales of gasoline.

COMMENTS:

1. **Sponsor and purpose of the bill.** According to Assembly Member Strickland's office, who is also the sponsor of the bill, this measure is intended to change the current law which sets up a system of double taxation by imposing the sales tax on another tax.

2. **The April 22, 1999 amendments raise concerns.** The bill would require the Franchise Tax Board to calculate the amount of revenue loss associated with the various local funds for purposes of reimbursing the affected local entities impacted by the proposed exclusion. Although it appears the Board of Equalization (BOE) would be the appropriate agency to do such calculations since the BOE administers these taxes, the amendments pose concern. The amendments would appear to mean that precise information with regard to the amount of local sales and use tax revenues attributable to the excise taxes on sales of gasoline for each local entity, including transit districts, would be required.

   In order to determine actual revenues, it would be necessary to establish a mechanism for identifying the number of gallons of gasoline and diesel fuel sold by location by each retailer. The sales tax is imposed upon the gross receipts from retail sales of tangible personal property. For example, a service station that has service stations in four different local jurisdictions would report its taxable sales on one sales and use tax return. Its taxable sales would be reported by location, which could include sales of sodas, cigarettes, and other taxable commodities in addition to the gasoline sold. Consequently, in order to accurately calculate the revenue losses to local jurisdictions, it would be necessary for affected taxpayers to separately report their taxable sales of gasoline by location. This would impose an additional recordkeeping burden on affected retailers. In order to minimize the impact on retailers, as well as the agency charged with the task of preparing the report, it is recommended that the bill be amended to allow for an estimation of the revenues attributable to each local entity.

3. **The proposed exclusion would not, in the long run, pose any significant administrative problems with Board.** Excluding the federal excise tax on diesel fuel and the federal and state excise taxes on gasoline from the measure of the sales tax, as proposed by this bill, would not, in the long run, cause administrative problems for the Board. However, there may be some transitional problems for gas/diesel station owners or operators to convert to the new system of taxation, especially due the fact that the provisions of the bill would likely become operative on January 1, 2000 – the same time that station owners and operators will be transitioning to achieve compliance for the year 2000. This could result in some errors on returns in reporting the proper amount of tax.

4. **Technical amendments suggested**. Since paragraph (c)(11) of Sections 6011 and 6012 already exclude the taxes imposed pursuant to the Diesel Fuel Tax Law (Part 31, commencing with Section 60001) from the computation of sales and use tax, the reference to Part 31 in proposed new paragraph (c)(12) is unnecessary and redundant. It is therefore suggested that, "or Part 31 (commencing with Section 60001)" be stricken from proposed paragraphs (c)(12) in both Sections 6011 and 6012.

In addition, under subparagraph (4)(A) of subdivision (c), a cross-reference should be made to reference proposed paragraphs (c)(12) of Sections 6011 and 6012 in order to incorporate the proposed exclusion. Without the cross-reference, this paragraph would appear to conflict with proposed paragraph (c)(12). It is therefore recommended that "and paragraph (12)" be added after "as provided in subparagraph (B)" in subparagraph (A) of paragraph (4) of subdivision (c) of both Sections 6011 and 6012.

COST ESTIMATE:

Moderate one-time administrative costs in the range of $10,000 to $50,000 would be incurred in notifying affected retailers. If the bill were amended to require the Board of Equalization to prepare the report, additional administrative costs would be incurred in revising tax returns for purposes of determining taxable sales of fuel by location and accumulating the data reported.

REVENUE ESTIMATE:

Currently, both the federal and state excise taxes on gasoline are subject to the sales and use tax. Only the federal excise tax on diesel fuel is subject to the sales and use tax.

Consumption of gasoline in California is estimated to be 14 billion gallons annually. Diesel consumption amounts to 2.4 billions gallons annually.

The current excise tax rates and estimated annual excise tax revenues are as follows:

	Gasoline	Diesel
Federal Excise Tax Rate	$0.184	$0.244
Estimated Annual Gallonage	14 billion	2.4 billion
Estimated Annual Revenue	$2.6 billion	$0.6 billion
State Excise Tax Rate	$0.18	
Estimated Annual Revenue	$2.5 billion	
Total Excise Tax Revenue	$5.1 billion	$0.6 billion
Total Amount Subject to AB 1315	$5.7 billion	

Revenue Summary

The annual revenue loss from excluding the $5.7 billion from the computation of sales and use tax would be as follows:

	Revenue Effect
State loss (5%)	$285 million
Local loss (2.25%)	128 million
Transit loss (0.67%)	38 million
Total	$451 million

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